

# UTAH SCHOOL LAW UPDATE

# Principal Jones is a . . . .

Like employees in many professions, educators may be extremely unhappy about a decision made by their boss—be it the principal, a department head, or a district supervisor. Educators may express their displeasure in the faculty lounge, at home, or out with friends.

But when an educator expresses frustration about a personal conflict with a supervisor or fellow employee in a public forum, such as a Facebook post, the educator may face some employment action.

Educators have First Amendment rights. However, the First Amendment protects an educator's speech on matters of public concern. An educator's personal issue with a principal is, by definition, NOT a matter of public concern.

Nor is one educator's view of the style of dress of another or the principal's refusal to give a teacher a personal day or a district decision to require that educators use only black ink on district forms. Educators may vent about these issues, but if they do so in a manner that negatively impacts the school, em-

ployment discipline—such as a letter of warning—may follow.

And the negative impact from the airing of a personal beef need not be severe to justify disciplinary action. Complaints about the teacher's comments from a few parents or fellow teachers or any other indications that the employer is viewed in a negative light may be enough to warrant some level of employment action.

Not to say the employee can be immediately fired for saying anything negative about a school or school official, but employees are expected to maintain the good name of their employer. An employee ranting and raving in a public manner about a personal issue with an employer is not a supportive employee—building the schools morale and reputation.

The disciplinary action taken depends on a number of factors, such as how many people the employee reached with the complaint, the type of allegations made in the complaint, and the actual impact at the school.

On the continuum of bad ideas, an educator

who takes out a full page newspaper ad bashing a principal who refused to give him a day of leave could face possible termination.

On the other hand, the teacher who posts to Facebook about the principal's really bad tie should be spared any employment consequences because the allegations are hardly likely to have any significant negative impact on the school or the principal.

However, if an employee tells a handful of people that a supervisor is a pedophile, the employee could face severe consequences since the allegations are criminal and the potential impact on the school is severe, even though only a few people initially heard the allegation.

Employees can complain about their employers, but there may be consequences for doing so in an irresponsible, public manner.

Utah State Office of Education

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#### **UPPAC CASES**

The Utah State Board of Education accepted a Stipulated Agreement suspending David Sean McCleskey's educator license. The suspension results from Mr. McCleskey accessing inappropriate and pornographic web sites using school computer equipment on multiple occasions.

## Eye on Legislation

Legislators have begun the process of requesting bills for the 2011 session of the Utah Legislature. While no text is available yet on the bills (except by special dispensation from the sponsoring legislator) bill titles are usually a source of great interest, amusement, or consternation, depending on your perspective.

So, the following bills are in some stage of drafting:

Sen. Howard Stephenson, R-Draper: Charter School Amendments, Charter School Finance Amendments, Curriculum in Public Schools, Engineering Education in Elementary and Secondary Schools, Funding of Online Learning, Honors Math Program, Math Education Initiative, Public School Accountability, Public School Teacher Tenure Modifications, School Curriculum Amendments,

School District Public School Conversion to a Charter School, School Restructuring, and Utah Orderly School Termination Act Repealer

Rep. Ron Bigelow, R-West Valley City: Charter School Revisions

Rep. Mike Morley, R-Spanish Fork: Civics Education Amendments

Rep. Rhonda Menlove, R-Garland, Concurrent Enrollment Transcripts

Rep. Ken Sumsion, R-American Fork: Divided School District Assets and Liabilities

Education Interim Committee: Eligibility for Interscholastic Activities in Secondary Schools, School Building Construction Modifications

Rep. Carl Wimmer, R-Herriman: Public School Transportation Amendments

Sen. Gene Davis, D-Salt Lake City, Retention Elections for School Board Superintendents

Rep. Craig Frank, R-Cedar Hills: School Administrator Amendments

Rep. Kraig Powell, R-Heber City: School Building Construction Impact Fees

Rep. Merlynn Newbold, R-South Jordan : School Finance Amendments

Sen. Stuart Adams, R-Layton: Tax and Related School Funding Amendments.

### **UPPAC** Case of the Month

Perhaps it's the economy, but the Professional Practices Commission has received a few extra cases of educators misusing school funds in recent months.

In most of the cases, the educator failed to follow school policies regarding collection of and accounting for funds. In some cases, the educator failed to properly receipt and account for cash contributions from students, parents, and fund-raisers. In others, the educator mixed personal and school funds.

State Board rule requires that educators handle school funds honestly and appropriately—whether the money is received from students or given to the educator in some form to purchase necessary items or as reimbursement for purchases previously made. Educators should know, without even reading a

school manual or the Board rule, that they should not be mixing school funds with their personal money. Educators should also know, without being told, that if they collect money directly from students or parents, they must turn in any cash received to the school immediately, provide the student or parent with a receipt for the funds, and not pocket the funds or give the

cash out to others.

Educators should also know to provide an itemized receipt to the school for purchases, not to use a receipt for an

item the educator didn't actually purchase, and not to claim a reimbursement for an item purchased for personal use.

Though this is common sense for most educators, several have

forgotten, or chosen to ignore their better judgment. Licensing sanctions for educators who do accept cash from students and then fail to turn in every dime received may include suspension or revocation.

An educator who uses school funds for personal uses faces a similar fate. Intentional misuse of funds to the tune of even a few dollars may cost the educator her entire profession—and the salary that goes with it.

Educators need to be fiscally responsible with public money. A cavalier attitude toward money collected through fundraisers or fees or toward reimbursements of expenses can be costly for the school, but even more so for the educator.

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#### **Recent Education Cases**

Evans-Marshall v. Board of Educ., (6th Cir. 2010). The 6th Circuit Court of Appeals ruled that an English teacher has no First Amendment right to make curricular choices in school.

Evans-Marshall is a high school teacher. As part of an assignment, she divided students into groups and asked each group to choose one book from the American Library Association list of "100 Most Frequently Challenged Books" to discuss. Two groups chose *Heather Has Two Mommies*.

When parents objected to the book, the principal asked the teacher to have the students choose another book. The teacher did. She then assigned the class to read *Siddhartha*. Parents again complained. This time, almost 100 parents attended a school board meeting to express concerns about books available to students in general and in Evans-Marshall's class in particular.

The relationship between Evans-Marshall and her principal became increasingly strained after this meeting. Finally, the school board voted not to renew Evans-Marshall's contract.

Evans-Marshall filed suit, claim-

ing she was retaliated against for exercising her "right" to select materials and methods of instruction in her classroom without the input of the principal or school board.

The court disagreed, explaining that Evans-Marshall was hired to speak. Since the school board hires the speech, "only the school board has ultimate responsibility for what goes on in the classroom, legitimately giving it a say over what teachers may (or may not) teach in the classroom."

On the other hand, an appellate court in Illinois dismissed a high school basketball coach's defamation lawsuit against parents.

Sandholm v. Kuecker (2010).

Sandholm was a teacher and coach at Dixon High School from 1999 through 2008. In 2008, the parents started a campaign to have Sandholm removed as a coach and athletic director.

One parent, Kuecker, posted a letter on a website which stated that the coach "only criticized athletes, badgered, humiliated, and bullied players, and was excessively abusive." Kuecker also sent a petition to the school board containing the same allegations.

The parents made similar allegations on a radio show and on the radio station's website. Kuecker also sent his opinions to a reporter.

Sandholm challenged each parent, claiming their comments were defamatory. The defendants countered that defamation law allows some comments which might otherwise be considered defamatory. In this case, the defendants argued, their comments would be allowed if the statements were made in furtherance of the right to petition, speak, or otherwise participate in government. This exception stems from the anti-Strategic Lawsuits Against Public Policy (SLAPP) Act which protects the public from lawsuits designed to discourage its participation in government or exercise of its constitutional rights. The court found that the parents' comments criticized his coaching style and were designed to encourage a public body, the school board, to remove him from his coaching position. As such, the parents were immune from suit under Illinois' anti-SLAPP act. (Utah also has an anti-SLAPP statute at 76B-6-1401).

# **Your Questions**

**Q:** Our school would like to adopt a policy allowing secondary students to bring in a dose of an overthe-counter (OTC) medication to school without a doctor's order. Is this permissible?

**A:** Yes, the students could bring in a dose of an OTC, but no, the students could not bring it in without a prescription.

The school should follow the requirements of 53A-11-601 which permit OTC medications PRO-VIDED: the school holds the medicines, someone in the school

What do you do when...?

is designated to administer the medications, the parents have provided written authorization for the students to take the medication, AND a licensed health care provider has prescribed the medication (see statute below). The only medications (OTC or prescribed) which students can carry on their persons are asthma and diabetes medications, per U.C.

53A-11-602 and 604. The students still need a doctor's note to carry these medications.

**Q:** We have an open campus at our secondary school. A parent called to inform us that two of our students were using their lunch period to engage in sexual activity at home. Are we liable for anything that happens off campus during the school day?

**A:** Case law suggests that school liability for some things does ex-

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

# Your Questions Cont.

(Continued from page 3)

tend to wherever the students may be during the school day. Thus, if a school has an open campus, liability extends to where the students can travel during the open period.

That does not mean, however, that the school is liable for a student's—or a third party's bad decisions. Courts examine a number of factors when determining a school's liability for any injury to a student. One of those factors is how reasonable the school's level of supervision is given the age and maturity level of the students. A junior high with an open campus, for example, is more likely to be held liable since the students are old enough to get into some serious trouble, but young enough not to know any better, thus requiring greater supervision than, for example, high school seniors.

On the other side of the equation, a high school that adopts a policy permitting students to leave campus but limiting the scope of their activities may also limit their liability for wrongful acts by students. For example, a school policy may provide for discipline if a

student breaks school rules while off campus or require that the student stay within certain boundaries around the

violates the policy.

around the school, and require written parent permission before a student can leave campus. Such a policy provides the school at least some protection from liability if a student

The best protection from liabil-

ity for the school is to close the campus. Short of that, the school should adopt reasonable policies, and follow through to the best of its ability. The school assumes liability if a student leaves an open campus and is injured, but it at least limits its liability to those reasonably foreseeable events that are not in violation of school rules.

The students engaged in sexual activity under such a policy would be subject to school discipline and the school would not be liable for their misconduct. On the other hand, the school may have to pay for at least some of the damages if a student is hit in a crosswalk (a reasonably foreseeable risk) and was crossing appropriately (the school's liability should be less, however, than that of the driver who hit him).